

**United States District Court  
Western District of Washington At Seattle**

James and Donna Foliart,

Plaintiff,

vs.

The United States of America, *et al.*

Defendants.

No. C17-1325 RSL

**Stipulated Motion And Order To  
Substitute Plaintiff James Foliart; To  
File An Amended Complaint To Add  
Parties; And, To Continue Pretrial  
Deadlines And Trial Date**

**STIPULATION**

The parties hereby stipulate and respectfully move the Court for an order permitting the following:

1. Pursuant to FRCP 25(a)(1), Plaintiff Donna Foliart be substituted for her recently deceased husband James Foliart as the lead plaintiff for this claim involving injuries arising out of alleged medical negligence. Plaintiff James Foliart passed away in the evening hours of June 22, 2018, leaving his wife, Donna Foliart, as the sole plaintiff in this action. On August 21, 2018

Stipulated Motion And Order To Substitute Plaintiff James Foliart; To File An Amended Complaint To Add Parties; And, To Continue Pretrial Deadlines And Trial Date

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Donna Foliart was duly appointed Personal Representative for the estate of her late husband, James Foliart. Thus, good cause exists and the parties stipulate that Donna Foliart be substituted for James Foliart in this action as the Personal Representative for the Estate of James R. Foliart. The case caption shall be adjusted accordingly.

2. Pursuant to FRCP 15(a), Plaintiff Donna Foliart, individually and as Personal Representative for the Estate of James R. Foliart, be allowed to file an amended complaint to add Linda M. Cintron, M.D. (hereinafter, "Cintron") and her employer, Medical Doctors Associates, LLC, (hereinafter, "MDA") as defendants herein. Cintron was a physician and anesthesiologist providing anesthesiology services as an independent contractor for defendant United States of America (hereinafter "VA"). The parties agree that the United States cannot be held vicariously liable for the negligence of an employee of an independent contractor. *See* 28 U.S.C. § 2671; *Carrillo v. United States*, 5 F.3d 1302, 1304 (9th Cir. 1993). As such, the Plaintiffs agree to dismiss any causes of action against the United States that are determined to be the sole product of Dr. Cintron's actions due to her status as an independent contractor.

3. An order continuing the trial date to February, 2020 and for a continuation of all related pre-trial dates. The trial of this case is currently set for March 4, 2019 and the expert disclosure deadline is September 5, 2018. The date for completion of discovery is currently set for November 4, 2018.

Good cause exists for the requested continuance in light of the discovery of new evidence and Mr. Foliart's passing. Good cause also exists in order to provide the new parties, Cintron and MDA, adequate time for the completion of discovery and the retention of experts. The requested continuance will also allow the parties time needed to proceed with discovery concerning Plaintiffs' case, including deposing the plaintiff Donna Foliart, Dr. Cintron and other witnesses;

The requested continuance does not result from any lack of diligence on the parties' or

counsels' part. Counsel for the parties have fostered an amicable working relationship that has served to facilitate discussions throughout this lawsuit. The parties have exchanged documents, answered written discovery and taken depositions.

**DATED this 29th day of August, 2018.**

**DATED this 29th day of August, 2018.**

*s/Gordon Webb and Neil Lindquist*

*S/TRICIA BOERGER PER EMAIL AUTHORITY*

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### **ORDER**

Based on the stipulation of the parties and good cause appearing in support thereof, IT IS  
**HEREBY ORDERED, ADJUDGED AND DECREED**

1. That Donna Foliart is substituted for James Foliart in this action as the Personal Representative for the Estate of James R. Foliart. The case caption shall be adjusted accordingly.

2. That Donna Foliart may file the Amended Complaint, which is attached as Exhibit A. The Plaintiffs agree to dismiss any causes of action against the United States determined to be the sole product of Dr. Cintron's actions due to her status as an independent contractor.

3. The trial date in this matter be continued from March 4, 2019 to February, 2020, or a date thereafter most convenient for the court; the Clerk shall issue a new minute order setting

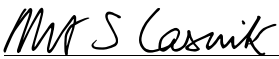
Stipulated Motion And Order To Substitute Plaintiff James Foliart; To File An Amended Complaint To Add Parties; And, To Continue Pretrial Deadlines And Trial Date

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1 forth the new pretrial deadlines pursuant to FRCP 16(b).

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3 **DATED this 5th day of September, 2018.**

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6 **Hon. Robert S. Lasnik**  
7 **United States District Judge**

8  
9 **Presented By:**

10 *s/Gordon Webb*  
11 *s/Neil Lindquist*

12 

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8  
9 **Approved by, Copy Received:**

10 *S/TRICIA BOERGER PER EMAIL AUTHORITY*

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